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File No. 6139-84

December 11, 2019

Via CM/ECF

Honorable R. Brooke Jackson
The United States District Court, District of Colorado
Alfred A. Arraj United States Courthouse A938
Denver, CO.

RE: Slatton v. Hopkins, et al, 18-cv-03112-RBJ-STV

Dear Judge Jackson:

On behalf of Defendants City of Fort Collins, Colorado, Brandon Barnes, and John Hutto (collectively “Fort Collins Defendants”) and pursuant to the Court’s Practice Standards respecting the filing of a Rule 12(b)(6) Motion to Dismiss, please find the following:

Undersigned Counsel for the Fort Collins Defendants participated in a conference call with Counsel for the Plaintiff, Liana Orshan and Helen Oh, on December 12, 2019, with the express purpose of discussing the filing of a Motion to Dismiss. The conference call took approximately 30 minutes, which included the time Counsel for Defendant Hopkins and Counsel for the Plaintiff discussed other issues not pertinent to these Defendants.

Counsel for the Fort Collins Defendants intends on filing a Motion to Dismiss all claims against them, pursuant to Federal Rule of Civil Procedure, 12(b)(6), consistent with the Motion filed in response to the previous iteration of Plaintiff’s Complaint (*See* ECF No. 39). In particular, with respect to the City of Fort Collins, the Plaintiff attempts to allege a claim for a violation of his Fourth Amendment rights under the notion he was subjected to excessive force (*See* ECF No. 73-1 at 18). It is the Plaintiff’s contention the City of Fort Collins failed to ‘properly train, supervise, and/or discipline its employees regarding the constitutional limits on use of force, and that such failure resulted from a deliberate choice by the City.’ (ECF No. 73-1 at para. 110-111). It is the City of Fort Collins’ position, however, that such allegations are conclusory and do not

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establish the requisite custom, practice, policy, or procedure and therefore do not satisfy Federal pleading standards.

With respect to Defendant Brandon Barnes, the Plaintiff attempts to allege a violation of his Fourth Amendment rights, pursuant to an unlawful seizure. As with the allegations involving the City, the parties discussed Officer Barnes' position that any such allegations are conclusory. In particular, the allegations in the Complaint outline actions by Defendant Hopkins, but do not implicate Officer Barnes. For example, the Plaintiff alleges Slatton and Hopkins were involved in a discussion about leaving the property (ECF No. 73-1 at para. 26-27), and it was Defendant Hopkins who told the Plaintiff he was under arrest (ECF No. 73-1 at para. 28). It is also acknowledged by the Plaintiff that the entire encounter between Hopkins and Slatton lasted approximately 30 seconds (ECF No. 73-1 at para. 29). Therefore, Officer Barnes contends any allegations with respect to a seizure or a failure to intervene, fails to meet federal pleading standards, including personal participation by Officer Barnes or even an ability to properly intervene.

Lastly, with respect to John Hutto, Plaintiff attempts a claim under the Fourth Amendment/excessive force, under a failure to train and supervisory capacity argument (*See* ECF no. 73-1 at par. 110-111). These arguments are duplicative of the claims against the City, and in addition there is nothing provided but conclusory allegations. Furthermore, there are no allegations respecting John Hutto's personal participation, all of which culminate in the argument that the Plaintiff has failed to properly allege claims pursuant to Federal pleading standards.

Respectfully submitted,

s/ Mark S. Ratner

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